

**ASSEMBLY BILL**

**No. 299**

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**Introduced by Committee on Insurance (Coto (Chair), Garrick (Vice Chair), Blakeslee, Carter, Feuer, Hayashi, Nava, Niello, and Torres)**

February 17, 2009

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An act to amend Sections 706.7, 730, 735.5, 736, 900.2, 942, 1170, 1182, 1197, and 11580.011 of, and to amend and renumber Section 10123.83 of, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 299, as introduced, Committee on Insurance. Insurance.

Existing law provides that annually the Insurance Commissioner shall mail to every domestic insurer a report specifying the reciprocal states.

This bill would provide that every 4 years the commissioner shall mail to every domestic insurer a report specifying the reciprocal states.

Existing law provides that at specified times the commissioner may, and at specified times shall, examine the business and affairs of insurers. In conducting an examination the commissioner shall consider the results of specified data, reports, and criteria.

This bill would add other criteria that the commissioner must consider as well as allowing the consideration of any other criteria deemed appropriate by the commissioner.

Existing law provides that the commissioner may disclose the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of this or any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time, or to the National Association of Insurance Commissioners (NAIC), as specified.

This bill would add market analysis data to the information that the commissioner may disclose, as specified.

Existing law provides that all examinations shall be at the expense of the insurer, organization, or person examined, except that special examinations which are in addition to regular examinations may be at the expense of the state in the discretion of the commissioner.

This bill would provide that all analyses performed pursuant to the provisions discussed above authorizing examinations by the commissioner would be at the expense of the insurer, as specified.

Existing law provides that all insurers doing business in this state shall have an annual audit by an independent certified public accountant. The audit shall be conducted and the audit report prepared and filed in conformity with the Annual Audited Financial Reports instructions contained in the annual statement instructions as adopted from time to time by the NAIC. Existing law authorizes the commissioner to grant a 30-day extension of the filing date upon a showing of substantial cause.

This bill would provide that the annual audit, including required auditor and management reporting, be conducted in conformity with the standards adopted by the NAIC. The bill would instead authorize the commissioner to grant multiple 30-day extensions, as specified.

Existing law provides that domestic incorporated insurers may invest in an account or accounts in one or more banks or savings and loan associations to the extent the account or accounts are insured by an agency or instrumentality of the federal government, as specified.

This bill would add credit unions to the financial institutions in which domestic incorporated insurers may invest.

Existing law provides that excess funds investments shall not be made in a loan to any one borrower, as defined, in an amount exceeding 10% of the capital stock and surplus or 1% of the admitted assets of the lending insurer, whichever amount is greater.

This bill would provide that excess fund investments shall not be made in a loan or any other obligation to any one borrower or obligor, as specified.

Existing law provides that every policy of automobile liability insurance, as specified, or collision coverage, as specified, shall provide coverage for replacement of a child passenger restraint system (child seat) that was in use by a child during an accident for which liability coverage under the policy is applicable due to the liability of an insured. Existing law provides that upon the filing of a claim for replacement,

unless otherwise determined, an insurer shall have an obligation to ask whether a child seat was in use by a child during an accident that is covered by the policy, and must replace the child seat if it was in use by a child during the accident or reimburse the claimant for the cost of purchasing a new child seat.

This bill would provide that every policy of automobile liability insurance, as specified, shall provide coverage for replacement of a child seat that was damaged in a covered accident, and that every policy that provides collision coverage, as defined, shall include a child seat within the definition of covered property, as specified. This bill would provide that upon the filing of a claim for replacement, unless otherwise determined, an insurer would have an obligation to ask whether a child seat was in use by a child during an accident or was in the vehicle at the time of a loss that is covered by the policy, and must replace the child seat or reimburse the claimant for the costs of buying a new child seat if it was in use by a child during the accident or if it sustained a covered loss while in the vehicle.

This bill would also make changes to obsolete cross-references in insurance provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 706.7 of the Insurance Code is amended  
2 to read:  
3 706.7. As used in this section, the term “reciprocal~~State~~” *state*”  
4 means a~~State~~ *state* the laws of which prohibit an insurer domiciled  
5 therein from insuring the lives or persons of residents of, or  
6 property or operations located in, the State of California unless it  
7 then holds a valid and subsisting certificate of authority issued by  
8 the Insurance Commissioner of this~~State~~.~~Such~~ *state*. *This*  
9 prohibition may be subject to the exceptions herein set forth.  
10 Subject to the exceptions herein set forth, a domestic insurer  
11 shall not enter into a contract of insurance upon the life or person  
12 of a resident of, or property or operations located in, a reciprocal  
13 ~~State~~ *state* unless it is authorized pursuant to the laws of that~~State~~  
14 *state* to transact such insurance therein. The commissioner shall,  
15 ~~annually~~ *every four years*, mail notice to every domestic insurer,  
16 specifying the reciprocal~~States~~ *states*.

1 The exceptions to the provisions of this section are the following:

2 (a) Contracts entered into where the prospective insured is  
3 personally present in the ~~State~~ *state* in which the insurer is  
4 authorized to transact insurance when he *or she* signs the  
5 application.

6 (b) The issuance of certificates under a lawfully transacted group  
7 life or group disability policy, where the master policy was entered  
8 into in a ~~State~~ *state* in which the insurer was then authorized to  
9 transact insurance.

10 (c) The renewal or continuance in force, with or without  
11 modification, of contracts otherwise lawful and which were not  
12 originally executed in violation of this section.

13 SEC. 2. Section 730 of the Insurance Code is amended to read:

14 730. (a) The commissioner, whenever he or she deems  
15 necessary or whenever he or she is requested by verified petition,  
16 signed by 25 persons interested as shareholders, policyholders, or  
17 creditors of any admitted insurer showing that the insurer is  
18 insolvent under this code, or upon information that any insurer has  
19 violated any provision of Article 7 (commencing with Section  
20 800), shall examine the business and affairs of the insurer. The  
21 commissioner shall so examine every domestic insurer before  
22 issuing to it a certificate of authority other than a renewal.

23 (b) The commissioner may conduct an examination under this  
24 article of any company as often as the commissioner in his or her  
25 discretion deems appropriate but shall, at a minimum, conduct an  
26 examination of every insurer admitted in this state not less  
27 frequently than once every five years. In scheduling and  
28 determining the nature, scope, and frequency of the examinations,  
29 the commissioner shall consider the results of financial statement  
30 analyses and ratios, changes in management or ownership, actuarial  
31 opinions, reports of independent certified public accountants,  
32 *market analysis results, including consumer complaint analysis,*  
33 *evaluation of ongoing regulatory activities, analysis of data derived*  
34 *from industry surveys or interrogatories,* and other criteria as set  
35 forth in the Examiner's Handbook *or in the Market Regulation*  
36 *Handbook* adopted by the National Association of Insurance  
37 Commissioners which are in effect when the commissioner  
38 exercises discretion under this section.

39 (c) For purposes of completing an examination of any company  
40 under this article, the commissioner may examine or investigate

1 any person, or the business of any person, insofar as the  
2 examination or investigation is, in the discretion of the  
3 commissioner, necessary or material to the examination of the  
4 company.

5 (d) In lieu of an examination under this article of any foreign  
6 or alien insurer admitted in this state, the commissioner may accept  
7 an examination report on the company as prepared by the insurance  
8 department of the company's state of domicile or port-of-entry  
9 state until January 1, 1994. Thereafter, these reports may only be  
10 accepted if (1) the insurance department was at the time of the  
11 examination accredited under the National Association of Insurance  
12 Commissioner's Financial Regulation Standards and Accreditation  
13 Program, or (2) the examination is performed under the supervision  
14 of an accredited insurance department or with the participation of  
15 one or more examiners who are employed by an accredited state  
16 insurance department and who, after a review of the examination  
17 work papers and report, state under oath that the examination was  
18 performed in a manner consistent with the standards and procedures  
19 required by their insurance department.

20 SEC. 3. Section 735.5 of the Insurance Code is amended to  
21 read:

22 735.5. (a) Nothing contained in this article shall be construed  
23 to limit the commissioner's authority to use and, if appropriate, to  
24 make public, any final or preliminary examination report, any  
25 examiner or company workpapers or other documents, or any other  
26 information discovered or developed during the course of any  
27 examination in the furtherance of any legal or regulatory action  
28 which the commissioner may, in his or her discretion, deem  
29 appropriate.

30 (b) Nothing contained in this code shall prevent or be construed  
31 as prohibiting the commissioner from disclosing the content of an  
32 examination report, preliminary examination report or results,  
33 *market analysis data*, or any matter relating thereto, to the  
34 insurance department of this or any other state or country, or to  
35 law enforcement officials of this or any other state or agency of  
36 the federal government at any time, or to the National Association  
37 of Insurance Commissioners, provided the recipient of the report  
38 or matters relating thereto agrees in writing to hold it confidential  
39 and in a manner consistent with this article, unless the prior written  
40 consent of the company to which it pertains has been obtained.

(c) All working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made pursuant to this article shall be given confidential treatment and are not subject to subpoena and shall not be made public by the commissioner or any other person, except to the extent provided in subdivision (a) or (b).

SEC. 4. Section 736 of the Insurance Code is amended to read:

736. All examinations *and analyses performed pursuant to Section 730* shall be at the expense of the insurer, organization, or person examined, except that special examinations which are in addition to regular examinations may be at the expense of the state in the discretion of the commissioner. The costs and expenses of all ~~such of those~~ examinations shall be paid from the support appropriation for the Department of Insurance current at the time of the examination but shall be charged to and collected from the insurer, organization or person examined. If any ~~such~~ insurer, organization, or person refuses to pay ~~such those~~ costs and expenses promptly when due, the commissioner may refuse to issue its certificate of authority, certificate of exemption, or license, as the case may be, and may revoke any existing certificate of authority, certificate of exemption, or license.

SEC. 5. Section 900.2 of the Insurance Code is amended to read:

900.2. (a) All insurers doing business in this state shall have an annual audit by an independent certified public accountant. The audit, *including required auditor and management reporting*, shall be conducted and the audit report prepared and filed in conformity with the ~~Annual Audited Financial Reports instructions contained in the annual statement instructions as adopted from time to time~~ standards adopted by the National Association of Insurance Commissioners.

(b) The commissioner may grant ~~a 30-day extension~~ extensions of the filing date upon a showing by the insurer and its independent certified public accountant of the reasons for requesting ~~that each~~ extension and the determination by the commissioner of substantial cause for an extension. The request for an extension shall be submitted in writing not less than ~~20~~ 10 days prior to the due date in sufficient detail to permit the commissioner to make an informed decision on the requested extension.

1 (c) The commissioner may promulgate regulations to further  
2 the purposes of this section.

3 SEC. 6. Section 942 of the Insurance Code is amended to read:

4 942. The commissioner shall permit a deposit of those securities  
5 in the State Treasury, subject to the provisions of ~~Sections 11715~~  
6 ~~and 11716~~ *Section 11691*, if applicable. The securities deposited  
7 with the ~~State~~ Treasurer shall be maintained in electronic book  
8 entry or certificate form as security for policyholders or  
9 policyholders and creditors of the insurer to whom they  
10 respectively belong. The state is responsible for the custody and  
11 safe return of any money or securities so deposited. ~~The State~~  
12 ~~Treasurer shall deposit any such~~ *these* moneys under the provisions  
13 of Sections 16370 and 16375 of the Government Code.

14 SEC. 7. Section 1170 of the Insurance Code is amended to  
15 read:

16 1170. Domestic incorporated insurers may invest their assets  
17 in the purchase of any of the securities specified in this article, or  
18 in loans upon such securities, ~~if such purchase or loan conforms~~  
19 *those purchases or loans conform* to all the following conditions:

20 (a) Such securities are not in default as to principal or interest  
21 at the date of investment.

22 (b) In the case of a purchase, the purchase price does not exceed  
23 the market value of the securities at the date of investment.

24 (c) In the case of a loan not governed by the provisions of  
25 ~~section 1176~~ *Section 1194.81*, the amount loaned does not exceed  
26 eighty-five per cent of such market value at the date of investment.

27 SEC. 8. Section 1182 of the Insurance Code is amended to  
28 read:

29 1182. Domestic incorporated insurers may invest in an account  
30 or accounts in one or more banks ~~or~~, savings and loan associations,  
31 *or credit unions* to the extent the account or accounts are insured  
32 by an agency or instrumentality of the federal government. As  
33 used in this section, an account may include a certificate of deposit.

34 SEC. 9. Section 1197 of the Insurance Code is amended to  
35 read:

36 1197. Excess funds investments shall not be made in a loan to  
37 any one borrower *or obligor*, including all affiliates which shall  
38 be treated as one borrower *or obligor*, in an amount exceeding 10  
39 percent of the capital stock and surplus or 1 percent of the admitted  
40 assets of the lending insurer, whichever amount is greater.

1 SEC. 10. Section 10123.83 of the Insurance Code, as added  
2 by Section 2 of Chapter 839 of the Statutes of 1998, is amended  
3 and renumbered to read:

4 ~~10123.83.~~

5 10123.835. (a) Every individual or group policy of disability  
6 insurance that covers hospital, medical, or surgical benefits that  
7 is issued, amended, or renewed on or after January 1, 1999, shall  
8 be deemed to provide coverage for the screening and diagnosis of  
9 prostate cancer, including, but not limited to, prostate-specific  
10 antigen testing and digital rectal examinations, when medically  
11 necessary and consistent with good professional practice.

12 (b) Nothing in this section shall be construed to require an  
13 individual or group policy to cover the surgical and other  
14 procedures known as radical prostatectomy, external beam radiation  
15 therapy, radiation seed implants, and combined hormonal therapy,  
16 or to prevent application of deductible or copayment provisions  
17 contained in the policy, nor shall this section be construed to  
18 require that coverage under an individual or group policy be  
19 extended to any other procedures.

20 (c) This section shall not apply to specified accident, specified  
21 disease, hospital indemnity, Medicare supplement, or long-term  
22 care health insurance policies.

23 SEC. 11. Section 11580.011 of the Insurance Code is amended  
24 to read:

25 11580.011. (a) As used in this section, “child passenger  
26 restraint system” means a system as described in Section 27360  
27 of the Vehicle Code.

28 (b) Every policy of automobile liability insurance, as described  
29 in Section 16054 of the Vehicle Code, shall provide liability  
30 coverage for replacement of a child passenger restraint system that  
31 was *damaged or was* in use by a child during an accident for which  
32 liability coverage under the policy is applicable due to the liability  
33 of an insured.

34 (c) Every policy of automobile liability insurance that provides  
35 uninsured motorist property damage coverage, as described in  
36 paragraph (2) of subdivision (a) of Section 11580.26, shall provide  
37 coverage for replacement of a child passenger restraint system that  
38 was *damaged or was* in use by a child during an accident for which  
39 uninsured motorist property damage coverage under the policy is  
40 applicable due to the liability of an uninsured motorist.



1 (d) Every policy that provides automobile collision coverage  
2 ~~or, as described in Section 660, or every policy that provides~~  
3 automobile physical damage coverage, as described in Section  
4 660, shall include a child passenger restraint system within the  
5 definition of covered property, if the child passenger restraint  
6 system was in use by a child during an accident *or, if the child*  
7 *passenger restraint system was in the vehicle and it sustained a*  
8 *loss covered by the policy.*

9 (e) Upon the filing of a claim pursuant to a policy described in  
10 subdivision (b), (c), or (d), unless otherwise determined, an insurer  
11 shall have an obligation to ask whether a child passenger restraint  
12 system was in use by a child during an accident *or was in the*  
13 *vehicle at the time of a loss* that is covered by the policy, and an  
14 obligation to replace the child passenger restraint system *or*  
15 *reimburse the claimant for the cost of purchasing a new passenger*  
16 *restraint system* in accordance with this section if it was in use by  
17 a child during the accident ~~or reimburse the claimant for the cost~~  
18 ~~of purchasing a new child passenger restraint system if it sustained~~  
19 *a covered loss while in the vehicle.*

20 (f) An insured, upon acquiring a replacement child passenger  
21 restraint system, may surrender the child passenger restraint system  
22 that was replaced to the nearest office of the Department of the  
23 California Highway Patrol.